



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1996

Mr. Randel B. Gibbs
Law Offices of Earl Luna, P.C.
4411 Central Building
Dallas, Texas 75205

OR96-0100

Dear Mr. Gibbs:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32057.

Garland Independent School District (the "district") received a request for copies of affidavits for intent to home school. You state that since the district is required to report trancies, but "bona fide home schools" are exempt from the compulsory attendance laws, the affidavits are used by the district to verify the status of children in the district who do not attend the district schools.

You assert that the affidavits are confidential under sections 552.026, 552.101, and 552.114 of the Government Code. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 excepts from disclosure educational records unless released in compliance with the Family Educational Rights and Privacy Act ("FERPA"), title 20 of the United States Code, section 1232g. FERPA provides that federal funding shall not be made available to "any educational agency or institution which has a policy or practice of permitting the release of educational records" of students without the written consent of the parents of minor students. 20 U.S.C. § 1232g(b)(1).

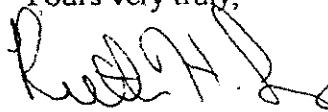
Enclosed is a letter from the United States Department of Education, received by this office on December 11, 1995, which states that affidavits of intent to home school are not education records under FERPA, since home schooled students are not considered to be in attendance in the school districts in which they reside. Nor do the affidavits at issue appear to be student records under section 552.114. We note that this office has generally treated student record information as the equivalent of education record information protected under FERPA. Open Records Decision No. 634 (1995) at 5 (copy enclosed).

You also assert that 552.101 of the Government Code excepts the affidavits from required public disclosure. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that the affidavits are protected from disclosure under common-law privacy.

The test to determine whether information is private and excepted from disclosure under common-law privacy provisions, which are encompassed in sections 552.101 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). We do not think that the information at issue is protected from disclosure under common-law privacy.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 32057

Enclosures: Submitted documents, Open Records Decision No. 634, letter from United States Department of Education

cc: Mr. David Anderson
General Counsel
Texas Education Agency
1701 N. Congress Avenue
Austin, Texas 78701-1494
(w/o enclosures)